Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1448

NAGATA BROTHERS FARMS,

Petitioner,

vs.

THE AGRICULTURAL LABOR RELATIONS BOARD OF THE STATE OF CALIFORNIA,

Respondent,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Real Party in Interest.

Brief of Real Party in Interest in Opposition to Petition for Writ of Certiorari.

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Brief of Real Party in Interest in Opposition to Petition for Writ of Certiorari.

Real Party in Interest UNITED FARM WORKERS OF AMERICA, AFL-CIO respectfully opposes the granting of the Petition for a Writ of Certiorari in this case on the grounds that this Court lacks jurisdiction of this action and that no substantial federal question is presented.

Jurisdiction.

Petitioner submits[1] this Court has jurisdiction pursuant to 28 U.S.C. § 1257(3), which requires, inter alia, a "[f]inal judgment or decree rendered by the highest court of a State in which a decision could be had . . . ." The requisite finality being absent in this case, this Court does not have jurisdiction.

The facts which belie Petitioner's implicit and unargued assertion of finality focus upon the remedial order issued by the California Agricultural Labor Relations Board[2] after the finding that Petitioner violated the California Agricultural Labor Relations Act[3] by obstructing Real Party in Interest's organizers' access to Petitioner's employees residing on ranch property. The Board's order challenged by the Petitioner provides:

> "[Petitioner shall] [p]ermit UFW representatives to drive to the dwelling sites of employees on its property at reasonable times; such times are to be determined by the Regional Director if the parties fail to agree thereon."[4]

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[1]Petition for a Writ of Certiorari (hereinafter referred to as "Petition"), p. 2.

[2]Hereinafter referred to as "Board." The Board is established pursuant to California Labor Code § 1141 (West's Suppl. 1980) and is responsible for the implementation of the California Agricultural Labor Relations Act.

[3]California Labor Code § 1140 *et seq.*; hereinafter referred to as "ALRA." The ALRA, enacted in May, 1975, established comprehensive regulation of labor relations in California agriculture. See generally, *Agricultural Labor Relations Board v. Superior Court*, 16 Cal.3d 392, 398-400, 128 Cal.Rptr. 183, 186-187, 546 P.2d 687, 690-691 (1976), *appeal dismissed for want of substantial federal question, sub nom., Kubo v. Agricultural Labor Relations Board* and *Pandol & Sons v. Agricultural Labor Relations Board*, 429 U.S. 802 (1976). The ALRA is modelled after, but not identical to, the National Labor Relations Act.

[4]Board Decision, App. B, p. 10.

To date, the further proceedings contemplated by this order have not been initiated.

Section 1257's finality requirement prevents piecemeal review of state court decisions, bars advisory opinions and enhances federal-state relations by limiting federal constitutional oversight of state affairs. *North Dakota Pharmacy Bd. v. Snyder's Stores*, 414 U.S. 156, 159 (1973). These interests militate in the case at bar against Petitioner's unacknowledged and unexamined contention that the Board's order is final for purposes of this Court's review. The extent of the required access has not been determined, rendering any opinion by this Court advisory. Review at this juncture would usurp the Board's efforts to resolve the access issue in light of its expertise.[5] Finally, since Petitioner concedes the propriety of some access,[6] the subsequent proceedings may avoid any claimed constitutional infirmity in the Board's order.

Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62 (1948), dictates the conclusion that this Court lacks jurisdiction. In *Republic Natural Gas Co.*, the administrative agency's order required the petitioner to take gas from a field "upon terms agreed upon . . . or, in the event of failure to agree, upon terms fixed by the [agency]." *Id.*, 334 U.S., at 63. This order, found to lack the required finality,[7] parallels the order challenged by Petitioner in this case.

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[5]In *Beth Israel Hospital v. N.L.R.B.*, 437 U.S. 483, 504 (1978), it was noted that "it is the [National Labor Relations] Board upon whom the duty falls in the first instance to determine the relative strength of the conflicting interests and to balance their weight." If the parties are unable to agree on reasonable access, the Board should be accorded the initial opportunity to weigh the competing factors.

[6]Petition, p. 10.

[7]The factors focused upon were that the remaining action required exercise of discretion and that the State should have the opportunity to resolve the controversy without federal interference. 334 U.S., at 69-71.

Thus, Petitioner fails to sustain its burden[8] of showing this Court has jurisdiction. The jurisdictional claim being in error, the Petition should be denied.

Questions Presented.

1. Can an employer, found to have interfered with the statutory rights of the employer's employees and of a union by preventing union organizers' access to residences located on the employer's property, be ordered to permit union organizers reasonable access to the employees' residences?

2. Does the Due Process clause of the Fourteenth Amendment require a court reviewing the order of a state labor relations board to hold oral argument over, and to write an opinion setting forth its reasons for, upholding the labor board's order?

Statutes Involved.

California Labor Code Section 1152:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

California Labor Code Section 1153(a):

> It shall be an unfair labor practice for an agricultural employer to do any of the following:

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[8] *Republic National Gas Co. v. Oklahoma, supra*, 334 U.S., at 70-71.

> (a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.

California Labor Code Section 1160.8:

> Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board's order. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.
>
> An order directing an election shall not be stayed pending review, but such order may be reviewed as provided in Section 1158.
>
> If the time for review of the board order has lapsed, and the person has not voluntarily complied with the

board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refuses to comply with the order, the court shall enforce such order by writ of injunction or other proper process. The court shall not review the merits of the order.

Statement of the Case.

1. The Factual Background.

Petitioner is an agricultural employer engaged in the growing and harvesting of strawberries and tomatoes in the northern part of San Diego County.[9] The workforce fluctuates between fifty and two hundred fifty employees divided into two distinct, separately-compensated groups: (1) the "commuters,"[10] a small group of workers receiving the higher pay and a travel allowance and (2) the 'locals," known to the commuters as "illegals" or "wetbacks" because of their propensity to run when the INS appears at the ranch.[11] The "locals" received, at the time of the incidents giving rise to this proceeding, forty cents per hour less than the "commuters."[12]

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[9]Decision of the administrative law officer (hereinafter "ALO Decision"), App. A, p. 3. The factual background of this action is set forth at ALO Decision, pp. 3-8. These findings were adopted by the Board. Board Decision, App. B, p. 1.

[10]For background regarding the "commuter" phenomenon, see, *Saxbe v. Bustos*, 419 U.S. 65 (1974).

[11]ALO Decision, App. A, p. 6. When a Board agent went to the ranch to discuss this case, the INS (Immigration and Naturalization Service) appeared and numbers of workers were observed to flee across the fields. RT Vol. III, pp. 32-33.

[12]ALO Decision, App. A, p. 5; General Counsel Exh. 4 (payroll records).

Petitioner's property lies at the end of a road, with vehicular access to the ranch possible at only one location. A locked chain bars this entry, although a number of outside persons, including certain suppliers and a catering wagon,[13] have keys to unlock the chain.

The ranch property, in addition to the growing crops, provides a "residence" for a probably transient and fluctuating, but nonetheless always present, population of Petitioner's employees. The workers, the "locals," "live" in caves tunneled into ravines, plastic tents, cardboard boxes, and other impermanent structures. Holes dug into the ground, with grills on top, as well as a mobile propane stove, serve as kitchen facilities. Food supplies and personal items are vended to the workers from the catering truck, which enters the ranch not only during work but late in the afternoon.[14] A nearly-invisible community exists on the ranch property, interspersed with the growing crops; Petitioner's principals are familiar with the habitats of the workers on their property and condone, if not encourage, these perhaps startling, but certainly not unique, living arrangements for their employees.[15]

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[13]Because agricultural jobsites have few fixed facilities, catering wagons journey from field to field with snacks, coffee, lunch, etc. As will be discussed, the catering wagon serving Petitioner's property additionally supplies the "locals" with basic living supplies. See, RT Vol. II, pp. 28-29.

[14]ALO Decision, App. A, pp. 6-9. These findings are supported by extensive testimony by workers and by an INS agent: *E.g.*, RT Vol. I, p. 104 (foreman moves stove to location where people are working); RT Vol. I, pp. 167-168 (workers living in caves); RT Vol. II, p. 24 (living quarters visible); RT Vol. II, p. 58 ("locals" always on ranch); RT Vol. III, pp. 32-33 (workers ran in presence of owner when INS showed up); RT Vol. III, pp. 42-47 (INS has apprehended illegals and reported to ranch); RT Vol. IV, p. 5 (owner observed shelters).

[15]ALO Decision, App. A, pp. 6-7. These findings are amply supported in the record. For example, Harry Nagata, a principal in Petitioner, conceded he would look over the fields at night and see fires "all over" the property. RT Vol. IV, p. 25.

On November 26, 1977, the in-the-field "homes" of the "locals" were the focus of organizing efforts of United Farm Workers' organizers. The organizers sought to drive onto the ranch property to communicate with the workers about the union. The chain barred entry. The union organizers contacted one of Petitioner's principals, requested entry and were refused. The proceedings leading to the order challenged in this action were initiated on the basis of this refusal.

2. The Administrative Proceedings.

An unfair labor practice charge pursuant to the ALRA was filed with the Board on November 29, 1977. As amended, this charge alleged a violation of Section 1153(a)[16] on the basis that efforts to communicate with Petitioner's employees had been denied. Relief prayed for included, inter alia, unimpeded access to employee "residences" in the field. A complaint issued which encompassed the denial of access and other alleged unfair labor practices.[17]

A hearing was held before an administrative law officer ("ALO") on the unfair labor charges set forth in the complaint. After testimony was taken, a written opinion issued.[18] The opinion reveals the ALO's careful consideration of all issues, including Petitioner's contention that the fields were not inhabited by workers. The overwhelming, credible evidence contradicted Petitioner's contention. The ALO's proposed remedy weighed statutory rights against Petitioner's property interest to find the necessity for an order that United

[16]Hereinafter, unless otherwise noted, all statutory references are to the California Labor Code (West's Suppl. 1980).
[17]ALO Decision, App. A, p. 2; General Counsel Exh. 1(f).
[18]App. A.

Farm Workers' organizers be permitted reasonable vehicular access to the fields.[19]

Pursuant to the established procedures, this proceeding was transferred to the Board; exceptions were filed by Petitioner. The Board reviewed the case, adopted the ALO's findings, but further examined the ALO's access remedy. Noting the vulnerability of workers in the circumstances found on the record, the Board concluded that union access to the workers was necessary to protect the employees' Section 1152 rights. However, the Board modified the ALO's unrestricted access order to provide as quoted *supra* at p. 4.[20]

Review of this order was sought in the California Court of Appeal pursuant to Section 1160.8. After the filing of a complete record and extensive briefing of the issues,[21] review was denied. A Petition for Hearing was denied by the California Supreme Court.

[19]Petitioner has advanced the suggestion that the ordered vehicular access provides the breach of constitutional safeguards sufficient to compel granting the Petition. Petition, p. 10. The ALO carefully considered this issue, concluding that denial of vehicular access to United Farm Workers' organizers would unduly burden Section 1152 rights and that such denial would be discriminatory, since others are allowed unsupervised vehicular access. App. A, pp. 18-20. Given that Petitioner permits its workers to live scattered throughout the ranch, it cannot deny the organizers the only reasonable means of reaching the workers. Although it may be highlighting the obvious, if no employees reside on the ranch, the United Farm Workers cannot demand vehicular access. One suspects that if Petitioner were as vigorous in ousting the "locals" from its ranch as it has been in pursuing insubstantial issues in this proceeding, there would be no problem regarding vehicular access.
[20]App. B, pp. 3-4, 6-7.
[21]See further discussion at, *infra*.

ARGUMENT.

Summary of Argument.

To state an ostensible controversy cognizable by this Court, Petitioner obfuscates the issues actually delineated by the Board's order and, to be charitable, suggests interpretations of the facts belied by the record. Removing the veils which Petitioner drapes over the record uncovers the only, and quite simple, question justified: To the extent that Petitioner allows its workers to establish residence in cardboard boxes, plastic tents and other "shelters" on property under its control, can Petitioner, consistent with its property rights, be compelled, under a state labor relations statute, to grant union organizers reasonable access to these "residences"?

To obscure this issue Petitioner propounds a version of the applicable facts which mocks the factual findings of the Board. For example, in spite of admissions to the effect that Petitioner's principal watched the fires which nightly dotted the ranch[22] and that the current address of over two hundred employees was the ranch address,[23] Petitioner asserts this case properly involves residences not permitted on its property. This example, but one of those that could be delineated, highlights the extent the Petition seeks, and requires for the statement of a substantial federal question, this Court's weighing of the evidence and rejection of Board findings based upon substantial evidence. This Court's rules preclude the factual review sought by Petitioner.

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[22]RT Vol. IV, p. 25.

[23]See General Counsel Exh. 4; ALO Decision, App. A, p. 6. The ALRA and the Board's regulations and decisions (*e.g.*, *Mapes Produce*, 2 ALRB No. 54 (1976)) require an employer to maintain a list of current *residence* addresses of employees.

Even if the facts suggest, however tenuously, an issue of interference with Petitioner's property rights, the Board's accommodation of statutory and property rights is unimpeachable. Complying with the direction of *Hudgens v. N.L.R.B.*, 424 U.S. 507 (1976), the Board balanced the statutorily-protected organizational rights of the employees and the union against Petitioner's property rights. The result was a finding of the necessity for union access to the "housing project" in Petitioner's fields. The balance dictating reasonable access, Petitioner has no claim that its property rights have been impinged by the Board's order.

Finally, Petitioner seeks to challenge, on Due Process grounds, the appellate review accorded the Board's order. If properly before this Court, the Due Process claim is patently frivolous. The Fourteenth Amendment does not require any review; *a fortiori* the review granted here was constitutional. Additionally, to state its Due Process contention, Petitioner advances the unstated presumption that California's appellate court refused to perform its prescribed duty. Stripped of this unwarranted presumption, the question posed is whether oral argument and a written decision are constitutionally-compelled elements of judicial review of administrative decisions. The answer is no.

Thus, the Petition in this action should be denied.

A. The Petition Should Be Denied Because It Essentially Seeks This Court's Reweighing of the Evidence.

Throughout the course of this proceeding Petitioner has advanced its ignorance of the "residences" dotting its ranch to justify denial of access. The credited facts undermine the claimed lack of culpability or responsibility:

> "It is not credible that [Petitioner] was unaware of the fact that workers lived on its property. . . . Nor is it

> credible that [Petitioner] has taken any meaningful action to prevent its workers from living on its property. On the contrary, it encourages them to do so by providing them access to the facilities listed above."[24]

These findings by the ALO, adopted by the Board, are supported by substantial, if not compelling, evidence. See, *supra*, at fn. 14.

The Petition to this Court persists in, and is founded upon, Petitioner's rejected factual claims.[25] Petitioner phrases the question before this Court in terms of the permissibility of required access to residences where workers live without permission. In light of the finding that Petitioner encourages, and economically benefits from the lower wages for, the "locals," the Petition must be viewed initially as a request by Petitioner for acceptance of its version of the facts; without the requested rejection of the facts as found by the Board, Petitioner's argument evaporates.

However, this Court consistently rejects invitations to reweigh findings supported by substantial evidence:

> "Of course, in constitutional cases, we have power to examine the whole record to arrive at an independent judgment as to whether constitutional rights have been invaded, but that does not mean that we will re-examine, as a court of first instance, findings of fact supported by substantial evidence."
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> *Norton Co. v. Department of Revenue*, 340 U.S. 534, 538 (1951).

Thus, absent exceptional circumstances, findings of fact supported by substantial evidence will not be disturbed. *E.g., Time, Inc. v. Firestone*, 424 U.S. 448, 457-458

[24]ALO Decision, App. A, pp. 14-15.

[25]The factual statement presented to this Court parallels, to a substantial degree, the post-hearing statement of facts argued to the ALO.

(1976); *Fry Roofing Co. v. Wood*, 344 U.S. 157, 159-160 (1952).[26]

Cursory review of the Petition in this case reveals that Petitioner essentially seeks this Court's reweighing of the evidence; the absence of any citation to the facts as found by the Board and the ALO highlights this conclusion. Well-settled principles preclude review to weigh the evidence. Since the Petition requires such proscribed review, it should be denied.

B. The Board's Order Does Not Infringe Petitioner's Property Rights.

In light of the findings and order of the Board, the only possible question framed for this Court is whether reasonable access to workers (mostly undocumented) residing in Petitioner's fields unconstitutionally impinges Petitioner's property rights. The Board's order incorporates a well-reasoned balancing of the competing statutory and property interests and thus infringes no constitutionally-protected interest.

As a response to extensive organizing among farmworkers by the United Farm Workers and other unions, the California Legislature in 1975 enacted the ALRA to provide comprehensive regulation of labor relations in agriculture. The ALRA stated substantive regulation of employers and union and established an administrative framework for implementation of this regulation.[27]

Although the ALRA diverges statutorily and administratively from the National Labor Relations Act ("NLRA")

[26]In cases under the National Labor Relations Act, the court does not "displace the board's choice" on evidence on which there is a conflict. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951).

[27]See fn. 3, *supra*.

in specifics related to unique difficulties found in agricultural employment, the basic outline of the ALRA corresponds to that of the NLRA.[28] Most important and persuasive in this proceeding is that Section 1152, set forth *supra* at p. 4, incorporates those employee rights protected under Section 7 of the NLRA (29 U.S.C. § 157).

The interaction between employee's rights as set forth in Section 1152 and an employer's property rights in labor relations requires that property rights cannot stand as an impermeable barrier to organizing. Organizing and property interests must be weighed to accommodate properly their conflicting demands:

> "Under the [National Labor Relations] Act the task of the [National Labor Relations] Board, subject to review by the courts, is to resolve the conflict between § 7 rights and private property rights, 'and to seek a proper accomodation between the two.' *Central Hardware Co. v. NLRB*, 407 U.S. [539], at 543 [(1971)]. What is 'a proper accomodation' in any situation may largely depend upon the content and the context of the § 7 rights being asserted."
>
> *Hudgens v. N.L.R.B.*, 424 U.S. 507, 521 (1976).

This accommodation, which falls to the labor relations board in the first instance (*Beth Israel Hospital v. N.L.R.B.*, 437 U.S. 483, 504 (1978)), can encompass orders requiring union access to an employer's property. The Board correctly accommodated the respective rights of the union, the employees and Petitioner in concluding that Petitioner's denial of access "interfered with employees' Section 1152 rights"[29] and ordering access to the workers at their residences. Petitioner concedes the Board's unimpeachable weighing of

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[28]See, *Agricultural Labor Relations Board v. Superior Court, supra.*
[29]Board Decision, App. B, p. 3.

Section 1152 rights with Petitioner's property rights by the failure to suggest any impropriety in the accommodation reached. Brief review of the competing factors illustrates that the order requiring access is appropriate.

On the one hand, Petitioner assists and encourages the "locals" to live on its property in conditions of extreme deprivation. Petitioner ignores the responsibility of providing habitable residences and benefits economically from the patent fear in which the "locals" live. The large pay differential between the two classes of workers has been noted.[30] Petitioner, in attempting to deny access to preclude organizing, invokes interests more akin to management interests (see, *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 803 n. 8 (1945)) than to property rights. The order here challenged does not infringe the uses of the property. *Compare, e.g., McDonald's Corp.*, 205 N.L.R.B. 404, 407 n. 18 (Opn. of ALJ) (organizational activities by employees in restaurant might interfere with customers). Petitioner permits its regular suppliers and the catering truck unrestricted vehicular access to the property. The Board's order places no unique burden on the use of the property.

Standing in stark contrast to the order's *de minimis* burdening of Petitioner's property interest is the effect upon Section 1152 rights if union access were denied. This case involves the intractable problem noted by the Chief Justice in *United States v. Ortiz*, 422 U.S. 891, 900 *et seq.* (Burger, C.J. conc.): The undocumented Mexican alien and his effect upon the domestic workforce. Petitioner has chosen to exploit this problem for its pecuniary benefit; the Union response, to protect its organizational interests and the rights of agricultural employees, has been efforts to organize the workers. Without the access ordered by the Board, such

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[30]*Supra.*

efforts would necessarily fail, for experience has revealed the necessity of access to workers at their homes for the protection of Section 1152 rights.

Many agricultural employees are illiterate or deficient in English, placing them beyond the reach of typical modes of worker communication. See, *Agricultural Labor Relations Board v. Superior Court*, 16 Cal.3d 392, 415, 128 Cal.Rptr. 183, 198, 546 P.2d 687, 702 (1976) *appeal dismissed for want of substantial federal question, sub nom., Kubo v. Agricultural Labor Relations Board* and *Pandol & Sons v. Agricultural Labor Relations Board*, 429 U.S. 802 (1976). The Board, after extensive hearings and its experience implementing the ALRA, has concluded that a worker's ability to receive communications at his residence is necessary to ensure the statutorily-protected right to collective organization. *Henry Moreno*, 3 A.L.R.B. No. 40, pp. 5-6. The National Labor Relations Board concurs in the conclusion that employee rights are unduly compromised when union access to workers at their homes is denied by the employer. See, *e.g., N.L.R.B. v. S. & H. Grossinger's, Inc.*, 372 F.2d 26 (2nd Cir. 1967); *N.L.R.B. v. Lake Superior Lumber Corp.*, 167 F.2d 147 (6th Cir. 1948). The order here challenged follows from this experience.

The absence of any substantial constitutionally-protected property interest can be focused from another perspective. The reasonable exercise of the police power affecting the use or enjoyment of property has consistently been upheld. (*E.g., Goldblatt v. Hempstead*, 369 U.S. 590 (1962). The Board's order embodies a reasonable exercise of this power, causing only a minor, if any, inconvenience to Petitioner's property rights. Such an inconvenience does not breach constitutional protections. *Republic Aviation Corp. v. N.L.R.B., supra*, 324 U.S. at 802 n. 8, quoting from *N.L.R.B. v. Cities Service Oil Co.*, 122 F.2d 149, 152 (2nd Cir. 1941) (" 'Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining.' "); see also, *Consolidated Cigar v. Department of Public Health*, 372 Mass. 844, 851, 364 N.E.2d 1202, 1207 (1977). More starkly stated, a property owner cannot claim property rights as a justification for making the land upon which employees reside a "prison isolation block impervious to visitation." *United Farm Workers v. Superior Court [Buak]*, 14 Cal.3d 902, 910, 122 Cal.Rptr. 877, 882, 537 P.2d 1237, 1242 (1975).[31]

Thus, whether viewed as an accommodation of statutory and property interests or a reasonable exercise of the police power, the Board's order does not infringe a constitutionally-protected property interest. The absence of a substantial federal issue compels denial of the Petition.

C. Petitioner Was Not Denied Due Process in This Case.

Somewhat hesitantly Petitioner advances a claim that it was denied Due Process in the proceedings affirming the challenged order. Asserting, mistakenly, that judicial review was limited to a "summary denial the day after the briefs [were] filed,"[32] Petitioner, without citation of *any* arguably-applicable authority, claims a denial of constitutional Due

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[31]Since *Hudgens v. N.L.R.B., supra*, sustains the constitutionality of the challenged order, the fact that *United Farm Workers* provides an additional, state constitutional ground for access requires little discussion. As this Court often notes, where a decision can be sustained on grounds other than a constitutional one, the constitutional question will be deferred. *Hagans v. Lavine*, 415 U.S. 528, 543 (1974) ("the [statutory claim] was to be decided first and the [constitutional question] not reached if the statutory claim was dispositive."). Petitioner misreads the Board's decision in claiming that the access order in this case followed primarily from the dictates of *United Farm Workers*; this misreading yields the failure to consider the balancing of Section 1152 rights and property rights which the Board has performed with regard to the access issue.

[32]Petition, p. 11.

Process. Even if properly before this Court, this contention is specious.

The procedural history of this case provides the necessary backdrop for evaluation of the Due Process claim. After a full hearing before an impartial administrative law officer, a written decision issued, resolving factual disputes and proposing an order.[33] The proceeding was transferred to the Board, where Petitioner excepted to certain findings and the form of order proposed by the ALO. The Board, although affirming the finding of a violation of the ALRA and the necessity of an access remedy, accepted certain of Petitioner's arguments; the ALO's proposed access order was modified.[34]

Following the administrative proceedings, Petitioner, pursuant to Section 1160.8, filed a Petition for Review with the California Court of Appeal on June 21, 1979. A full record was certified to the Court of Appeal by the Board on June 27, 1979 and Petitioner's Opening Brief (of 46 pages) was filed on August 31, 1979. Responsive briefs by the General Counsel of the ALRB and the United Farm Workers were filed on October 1, 1979 and November 1, 1979 respectively. Petitioner submitted a reply brief on November 15, 1979. The Court of Appeal's summary denial issued the following day. A Petition for Hearing was filed with the California Supreme Court on November 26, 1979; this Petition was denied on December 13, 1979.

These facts, and the briefs actually filed, reveal that Petitioner was accorded, and utilized, every opportunity to present its arguments to the appellate courts. These arguments were before the Court of Appeal for over two months, contrary to the implication that summary denial followed

[33]App. A.
[34]App. B, pp. 6-7.

by one day the filing of briefs. Since Petitioner presents no facts to conclude that the Court of Appeal failed to perform its duty to exercise its "sound discretion" (*Tex-Cal Land Management Inc. v. Agricultural Labor Relations Board*, 24 Cal.3d 335, 351, 156 Cal.Rptr. 1, 10, 595 P.2d 579, 588 (1979)), prior to denial of the Petition for Review, the only question which emerges is whether a court reviewing an administrative order must "entertain oral argument and write an opinion." *Ibid.*

A jurisdictional consideration intrudes prior to examination of this question. Petitioner never asserted the constitutional invalidity of the review procedures under the ALRA to any California court. Title 28, U.S.C. Section 1257(3) requires that the constitutional issue must be "drawn into question." See, *Cox Broadcasting Co. v. Cohn*, 420 U.S. 469, 476 (1975). Having failed to advance the Due Process claim to the California Supreme Court, certiorari jurisdiction cannot be asserted.

Assuming a Due Process contention is properly before this Court, Petitioner fails to state any remotely-cognizable constitutional issue. The assumption underlying the argument advanced[35] appears to be that appellate review of administrative decisions is constitutionally compelled. Yet, no case is cited (and none has been found) as mandating such review. The purported authorities advanced by Petitioner arose pursuant to review procedures of the federal Administrative Procedure Act (Title 5, U.S.C. Section 701 *et seq.*) and one case cited (*Morris v. Gressett*, 432 U.S. 491 (1977)) upholds denial of judicial review of an administrative decision by the Attorney General. Appellate review does not stand as a necessary component of Due Process:

[35]Petition, pp. 10-12.

"This Court has recognized that if a full and fair trial on the merits is provided, the Due Process Clause of the Fourteenth Amendment does not require a State to provide appellate review, [Citations] . . . ."

Lindsey v. Normet, 405 U.S. 56, 77 (1972); see also, *Switchmen's Union v. National Mediation Board*, 320 U.S. 297, 301 (1943) (administrative decision not subject to review).

In this action, Petitioner was accorded the necessary elements of Due Process: A full and fair hearing on the merits. Petitioner does not contend otherwise and Due Process was thus satisfied.

Even if the Due Process clause were found to require appellate review, the California procedure utilized in this case is immune to the claimed invalidity. As noted above, Petitioner had the opportunity to present its contentions to the Court of Appeal on the basis of a complete record. The only Due Process complaint available is the absence of oral argument and a written opinion.

Due Process does not dictate procedures, but allows for flexibility to accommodate the particular circumstances. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Prompt resolution of labor relations issues and prevention of the overburdening of appellate courts with unmeritorious petitions are substantial factors sustaining summary denial of insufficient petitions for review. Just as the summary judgment procedure reflects the interest in prompt disposition of cases without substantial dispute, the procedure under Section 1160.8 provides prompt affirmance of proper Board decisions. California's summary disposition of petitions in certain instances thus involves a choice between competing interests, which does not violate Due Process. Petitioner's Due Process claim should be recognized for what it is: An

attempt to introduce unnecessary delay in Petitioner's duty to comply with the Board's order. The Due Process claim is without substance.

Conclusion.

Contrary to Petitioner's assertion that this case involves the issue of First Amendment access to private property, the preceding discussion reveals that the challenged order of the California Agricultural Labor Relations Board is based upon an uncontested finding of Petitioner's clear interference with the statutory rights granted agricultural employees under the ALRA. Having chosen to encourage its employees to live in hovels and caves on its property, Petitioner cannot assert a constitutional interest of sufficient compulsion to bar access to these employees by United Farm Workers' organizers. No substantial federal question is presented. Thus, even if Petitioner has overcome the jurisdictional hurdle, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JEROME COHEN,

Attorney for Real Party in Interest United Farm Workers of America, AFL-CIO.

Of Counsel:
GEORGE C. LAZAR.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of May, A.D. 1980.

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